MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian Hartman

Re: Recent Legislative & Regulatory Initiatives

Date: March 14, 2007

I am providing my comments on nineteen (19) legislative and regulatory initiatives in anticipation of the March 15 meeting. Given time constraints, my commentary should be considered preliminary and non-exhaustive.

1. DMMA Final Retirement Funds Regulation [10 DE Reg. 1436 (3-1-07)]

The SCPD and GACEC commented on the proposed version of these regulations in November, 2006. The standards establish the criteria for treatment of pension and retirement funds. The DMMA has now adopted final regulations incorporating some of the recommended amendments.

First, the Councils recommended substituting "withdrawals" for "withdraws" in Section 20330.4. DMMA agreed and effected the substitution.

Second, the Councils recommended capitalization of the word "(t)hese in Section 20330.4, last paragraph. DMMA agreed but the final regulation still contains the error.

Third, the Councils questioned a representation that "age" is the sole criterion for eligibility under a defined benefit plan. The Councils noted that an individual would have to actually "retire" to receive benefits under an employer's plan. DMMA agreed and amended this paragraph with a variation of the sentence recommended by the Councils.

I recommend that the Councils issue a "thank-you" letter to the DMMA for its consideration of the Councils' comments while noting that the capitalization error still appears in the published final regulation.

2. DMMA Final LTC Transfer of Assets Regulation [10 DE Reg. 1439 (3-1-07)]

This is an information item.

The SCPD commented on the proposed version of these regulations in January, 2007. The proposed changes were technical amendments required to achieve conformity with the federal Deficit Reduction Act ("DRA"). The SCPD shared its analysis of the proposed regulations and indicated that it had no objection to the amendments.

The DMMA has now acknowledged the SCPD comments and adopted final regulations with no changes.

3. DOE Final Extracurricular Activities Regulation [10 DE Reg. 1433 (3-1-07)]

This is an information item.

The SCPD and GACEC commented on the proposed version of these regulations in January, 2007. The standards were intended to require charter schools to establish academic eligibility criteria for student participation in extracurricular activities apart from interscholastic sports. The Councils endorsed the regulation with the caveat that the DOE reconsider the "downside" of providing disincentives to students struggling academically to participate in extracurricular activities. Sometimes, the extracurricular activities serve as a motivator to deter a student from dropping out. Rather than excluding academically struggling students from activities, the Councils recommended development of remedial plans.

The DOE has now adopted final regulations with no changes. In response to the Councils' concerns, the DOE simply recites as follows: "The Department prefers to allow local school districts and charter schools to set the standards for participation in extra curricular activities in all areas except interscholastic athletics."

Since the regulations are final, I recommend no further action.

4. DOE Final Early Childhood Teacher Certification Reg. [10 DE Reg. 1434 (3-1-07)]

This is an information item.

The SCPD and GACEC commented on the proposed version of these regulations in January, 2007. The Councils raised only one concern, i.e., whether the Professional Standards Board's jurisdiction in the context of certification of personnel in the IDEIA-C program was limited by the statutory authority of DHSS to issue regulations defining the qualifications of personnel in that program.

The Board and DOE have now adopted final regulations with no changes. They indicate that they reviewed relevant law and "the Professional Standard Board felt that it was within their purview to promulgate certification standards in this area."

Since the regulations are final, I recommend no further action.

5. DOE Final DSTP Regulations [10 DE Reg. 1425 (3-1-07)]

The SCPD and GACEC commented on the proposed version of these regulations in January, 2007. The DOE has now adopted final regulations with a few changes.

First, the Councils recommended correction of a "typo" in Section 6.1.1. The DOE does not mention this comment but the text has been corrected in the final regulations.

Second, the Councils recommended inclusion of a clarifying preface to Section 6.5.2.2. No change was made.

Third, the Councils recommended expansion of the list of "other academic indicators" currently in effect. No change was made.

Fourth, the Councils recommended that Section 6.3.5 be amended to refer to "school year" rather than "the year" to ensure that flexibility is available to students transferring to a school in their senior year. The Department agreed and substituted "school year".

Since the regulations are final, I recommend no further action.

6. DMMA Prop. Home Equity Medicaid Disqualification Reg. [10 DE Reg. 1373 (3-1-07)]

DMMA proposes to adopt another restriction on Medicaid eligibility for long-term care based on the Deficit Reduction Act (DRA).

The "Summary of Proposal" section (p. 1373) accurately describes the latest proposal. The DRA disallows Medicaid LTC eligibility if the applicant has either: 1) $500,000 in home equity or 2) at a state's option, some amount between $500,000 and $750,000. This limit does not apply if the applicant has certain relatives living in the home, i.e., spouse, child under 21, or "adult disabled child". The limit would increase incrementally beginning in 2011 based on the Consumer Price Index (CPI).

Consistent with the attachments, Pennsylvania has adopted the $500,000 standard. New York and Maine have adopted a $750,000 limit. The President's proposed FY 08 budget recommends elimination of all state discretion in favor of imposing the $500,000 standard nationwide.

I did not observe any technical concerns with the proposed regulation. However, I recommend that Delaware follow the lead of New York and Maine in adopting a higher cap. Political compromises on the federal budget are commonplace and it is possible that states adopting a higher cap could have limits "grandfathered". While the $500,000 cap may appear reasonable to some policymakers today, $500,000 in home equity (even considering incremental increases based on the CPI) may not amount to much in the future (e.g. 10 years from now). Adopting a higher cap now may protect Delaware's prospective flexibility and discretion.

7. DSS Final Food Stamp/TANF Disqualification Regulation [10 DE Reg. 1441 (3-1-07)]

The Division of Social Services is publishing a final regulation to correct a technical error. DSS characterizes the amendment as exempt from publication as a proposed regulation since the change is minor and technical.

As background, the Division adopted standards a few years ago to implement changes in federal law. The State revised the time periods for disqualification based on intentional violations of Food Stamp and TANF program standards. These revised standards are outlined in Section 2023.2. DSS has now amended Section 2023.5 in an attempt to reach consistency with Section 2023.2.

Although comments are not solicited, I recommend that the Council notify DSS that the amendments do not achieve consistency in the regulations. Section 2023.2, Pars. 1-3, contain variations on penalties based on involvement in sales of drugs, firearms, ammunition or explosives or trafficking in Food Stamp benefits valued at $500 or more. These variations are not reflected in the amended regulation. For ease of reference, DSS could consider substituting the following for the current Section 2023.5, Par. 3.f: "A warning that a determination of intentional Program violation will result in a period of disqualification conforming to Section 2023.2 and a statement of which penalty the Division believes is applicable to the case scheduled for hearing." This would resolve any inconsistency between the regulations.

8. DSS Prop. "Work for Your Welfare" Regulations [10 DE Reg. 1398 (3-1-07)]

DSS is proposing amendments to its "Work for Your Welfare"program. The changes are prompted by the desire to achieve conformity with federal standards. Some revisions have a negative effect on beneficiaries [e.g. Section 9082, Par. 9] and some have a positive effect on beneficiaries [e.g. Section 9092, Par. a)]. In general, the standards stress employment to the detriment of job search and training activities.

I have the following observations.

First, although not earmarked for amendment, DSS may wish to delete the extraneous "or" in Section 9082, first sentence, between "GA)" and "have".

Second, in Section 9092, since Par. 2 refers to "state" minimum wage, Par. 1 should be amended by inserting either "state" or "federal" prior to "minimum wage". Otherwise, it is unclear which minimum wage is used in the calculation.

Third, Section 9092 is confusing. The standards at the top of p. 1400 are prescriptive and literally require households to work a certain number (30-55) of hours. This is followed by a formula which can result in a fewer required work hours. See Par. 5 (lesser of the above 30-55 hours and number of hours determined by formula). It would be preferable to reconcile these ostensibly inconsistent provisions.

Fourth, in the "Summary" section on p. 1401, first bullet, the new standard actually expands the exemption from work for a single parent with an infant (i.e. from infant under 13 weeks to under 12 months). The 12-month standard appears to be the TANF norm. See 16 DE Admin Code 3006.1. Moreover, there does not appear to be an explicit cut-off based on infant age in the Food Stamp Program. See 16 DE Admin Code 10003.1. Therefore the "bullet" inaccurately recites that it "lowers the age at which a child exempts a single custodial parent from work requirements".

I recommend sharing the above observations with DSS.

9. DSS Prop. Food Stamp Employment & Training Program Reg. [10 DE Reg. 1401 (3-1-07)]

DSS proposes to adopt some discrete amendments to its Food Stamp Employment & Training Program regulations. The impetus underlying the proposed amendments is the Division's interpretation of federal commentary to regulations issued last summer. I attach an excerpt from 71 Fed. Reg. 33376-33384 (June 9, 2006).

I have the following observations.

First, the federal commentary does not justify the breadth of the proposed State restrictions placed on allowable services and supports. The federal commentary disallows "post-employment" services, i.e., services after acceptance of a job offer. The commentary explicitly authorizes services to obtain employment:

> Based on the language in the Food Stamp Act and on the legislative history of the E&T Program, Congress clearly intended to limit the scope of the Program to preparing for and obtaining employment. Post-employment services were never part of the Program's mandate...
>
> Since the E&T Program is defined by its components and all the components are designed to enable participants to obtain jobs, reimbursing the costs of goods and services associated with employment retention are beyond the scope of what can be allowed. Thus, FNS must limit participation reimbursements to those costs involved in successful component participation and disallow costs associated with starting and keeping a job once one has been offered.

[emphasis supplied]

In contrast, DSS proposes a sweeping exclusion for all services linked to obtaining employment! Section 10007.3, in pertinent part, contains a categorical exclusion for such supports:

> Services to obtain and keep employment are not an allowable reimbursement.

The words "obtain and" should be deleted.

Second, for similar reasons, complete deletion of Par. B is not required. The text could simply be revised to read as follows:

These services can include clothes that are appropriate for in-person applications and interviews.

Compare new Par. B, authorizing coverage of uniforms for training. There could be a dress code or specific clothing required for training activities (e.g. scrubs for CNA or LPN training). Moreover, clothing should also be covered for other pre-employment activities such as in-person applications and interviews.

Third, for similar reasons, complete deletion of Par. D is not required. Consider the following alternatives:

This service is only necessary when a participant's dental condition poses a significant barrier to employability.

OR

This service is only necessary when a participant's dental condition poses a significant barrier to training, in-person applications, and interviews.

OR

This service is only necessary when a participant's dental condition poses a significant barrier to articulation or expressive communication in training, in-person applications, and interviews.

I recommend that the Council share the above observations with the Division. The comments should also be promptly shared with DVR since the restrictions, if adopted, could deflect participants with disabilities to DVR for many supports.

10. DSS Proposed Child Care Subsidy Regulation [10 DE Reg. 1396 (3-1-07)]

The Division proposes to effect a few technical changes to its Child Care Subsidy standards. The changes, which amount to adding 16 words, are minor.

I recommend no action.

11. DSS Proposed Citizenship Regulations [10 DE Reg. 1389 (3-1-07)]

The Division of Social Services is proposing some amendments to its standards defining when a child born outside the United States will qualify as a citizen for purposes of Delaware cash assistance and Food Stamp programs.

Given the limited disability nexus, and the need to review multiple sets of federal regulations to accurately assess the standards, I am not proffering an analysis of these regulations.

12. Dept. Of Insurance Prop. Young Adult Insurance Regulation [10 DE Reg. 1403 (3-1-07)]

In 2006, the Council endorsed the concept of legislation (H.B. No. 446) requiring State-regulated insurers to offer continuation of insurance to dependents up to their 24th birthday. Apart from the age standard, the dependents qualify for continued coverage only if they are: 1) unmarried; 2) otherwise uninsured; 3) without their own dependents; and 4) either Delaware residents or full-time college students. The Council recommended a few amendments which were not adopted. The bill was enacted and signed by the Governor on July 10, 2006.

The Department of Insurance is now issuing proposed regulations to partially implement the legislation. A public hearing on the standards is scheduled on April 3, 2007.

Apart from an incorrect citation to the legislation (H.B. 466 rather than H.B. No. 446), I did not identify any concerns with the proposed regulations. Insurers will be required to a submit a certified notice of compliance. Insurers will also be required to submit rate filings which demonstrate that the premium for a covered dependent does not exceed 102% of the applicable portion of the premium previously paid for that dependent's coverage. See Section 4.3. This conforms to limits established by H.B. No. 446, i.e., amendments to Title 18 Del.C. §§3354(g) and 3570(g).

I recommend endorsement of the regulations which will expand the availability of affordable health insurance to a population with statistically low rates of insurance coverage.

13. DOE Proposed Special Education Regulations [10 DE Reg. 1365 (3-1-07)]

The Department is formally publishing its proposed regulations to achieve conformity with the new federal IDEIA regulations adopted last summer [71 Fed Reg. 46540 (August 14, 2006)]. Earlier this year, the GACEC convened a workgroup to review pre-publication drafts of the proposed standards. To inform the GACEC's analysis, I submitted a 63-paragraph set of comments on January 27 and a 57-paragraph set of comments on February 19. Both sets were shared with the DOE.

The proposed regulations published on March 1 are 161 pages in length. Given my prior commentary, and lack of available time, I am not proffering an analysis of the March 1 version of these regulations.

14. DPH Proposed Personal Assistance Services Agencies Regulations [10 DE Reg. 1376 (3-1-07)]

The SCPD commented on an initial pre-publication draft of these regulations in September, 2006. The SCPD then commented on a second pre-publication draft of these regulations consistent with my January 25, 2007 memo. This January draft incorporated many, but not all, of the SCPD's September recommendations. The Division of Public Health has now formally published proposed regulations. A public hearing is scheduled on March 27, 2007.

Since the Council has already submitted 2 sets of comments, my latest analysis is based on a comparison of my January 25, 2007 35-paragraph memo with the published regulations. DPH adopted amendments based on Council commentary with the exception of the fifteen (15) paragraphs listed below. Comments which appeared in both the September and January compilation are earmarked with an asterisk (*). In the important context of delegation, the

regulations (§5.4) have been amended to authorize competent individuals to delegate tasks they could normally perform themselves but for functional limitations.

1*. In Section 1.1, the scope of services qualifying under the definitions of "companion" and "homemaker" are almost identical. Both definitions encompass housekeeping, cooking/meal preparation, and shopping/errands. Companion services and homemaker services are treated as distinct categories under the definition of "direct care worker". It would be preferable to adopt definitions clarifying distinctions between these categories.

2*. Some personal assistance agencies (e.g. Comfort Keepers) include transportation (e.g. to store; medical appointment) within their menu of services. DPH should include this as an authorized service under one or more of the definitions in Section 1.1 (e.g homemaker; companion; personal assistance). Section 5.1.4.1 requires the agency to include "transportation" within its personal assistance agreement with the consumer. It is inconsistent to treat transportation as a personal assistance service to be included in the agreement while omitting it from the definition section as a covered service. Finally, the definition of "personal assistance services" is strict, i.e., "services are limited" to a defined list. Omission of any reference to transportation means that it cannot qualify as a personal assistance service.

11. In Section 2.4, there are explicit due process protections applicable to some disciplinary sanctions. For example, suspensions and revocations of licenses require notice (Section 2.4.3.1) and opportunity for hearing (Section 2.4.3.1.3). However, it is unclear what due process is available in other disciplinary contexts. For example, if the Department imposes an administrative penalty under Section 2.4.2.7.1, is there advance notice and right to a hearing? The availability of due process is likewise unclear for other sanctions (e.g. placement on provisional status accompanied by suspension of all admissions; refusal to renew license; refusal to issue initial license).

14. Section 2.7.1 contemplates "periodic" inspections by DHSS. It would be preferable to include an "outside" timetable. Since licensing is annual, an annual inspection should be the minimum. The Section could then be amended to read as follows: "A representative of the Department shall conduct at least annual inspections of every personal assistance services agency..."

17. In Section 4.4.2.4, consider substituting "and" for "or" such that consumer satisfaction surveys are required, not optional.

18. In Section 4.4.2.6.6, there is a plural pronoun (their) with a singular antecedent (individual). Consider substituting "Individuals" for "Any individual".

20. Section 4.5 could also benefit from inclusion of shopping-related financial documentation since shopping and running errands are included among personal assistance services. How should purchases and receipts be recorded? Should only cash transactions be done? Each agency must have "tight" policies and training in this context.

22. There is some "tension" between Section 5.1.3 and Section 7.0. Literally, Section 5.1.3 would authorize an agency to forego liability insurance while Section 7.0 would require it. It should be required.

25. In Section 5.3, it would be preferable to include a "reminder", based on the definition of "service plan", that it should include the scope, frequency, and duration of services. Perhaps a Section 5.3.4 could be added as follows: "The service plan shall include the scope, frequency, and duration of services."

29. In Section 5.5.2, DPH may wish to consider requiring that the consumer's signature be included on the activity logs. My impression is that most agencies require a consumer "sign-off" or acknowledgment of receipt of itemized services as a matter of practice. This reduces prospects for disputes over services.

30. Section 5.5.12.3.1 allows an agency 30 calendar days to submit a report on a "major adverse incident", including unexpected death. This is too long and would compromise any State investigation of negligence.

32*. In Section 5.6.3, it would be preferable to require 30 days notice prior to discharge rather than 2 weeks. Compare Title 16 Del.C. Section 1121(18). It may be very difficult for a consumer to obtain an alternate agency services plan within 2 weeks.

33. Section 5.6.3.2 authorizes a provider to discontinue services immediately upon its unilateral determination that the consumer should have a higher level of care. No notice would be required, leaving the consumer at great risk. In 2006, an assisted living agency unilaterally determined that a consumer (D.R.) exceeded the assisted living level of care and unilaterally terminated her services. The Division of Long-term Care Residents Protection conducted its own evaluation, determined the consumer eligible for assisted living services, and fined the provider who refused to reinstate services. Agencies make mistakes. Indeed, mistakes may be common in this context since the regulations allow the agency to make the level of care decision through persons with no credentials whatsoever. See Sections 5.2.1 and 5.3.1. If DPH allows abrupt, unilateral termination of services with no notice, this will create a huge "loophole" for agencies who simply want to stop services with no notice. Moreover, if a consumer has decompensated to the point of needing more care, an orderly transition period to a higher level provider would be more logical than complete termination of all services. The DPH approach would be akin to a nursing home determining that a resident needs a hospital level of care and abruptly discharging the resident to the street!

34. The exception of notice for non-cooperation or non-payment of charges (Section 5.6.3.3) is also highly objectionable. Contrast Title 16 Del.C. Section 1121(18), requiring 30 day notice of termination from long-term care facility even for non-payment. Similarly, dispensing with notice "when service goals have been met" is subjective and objectionable. I recommend adoption of a 30 day notice period and deletion of all exceptions (Sections 5.6.3.1-5.6.3.4) but for "emergency situations", akin to Title 16 Del.C. Section 1121(18). Apart from notice, I also recommend some authorization for consumer appeal of the decision.

35. In Section 7.0, DPH may wish to consider requiring that the insurance policy include a provision requiring notice to DHSS upon termination of the policy. For example, mortgagees routinely require homeowner policies to include such a notice. Otherwise, DPH may not know that a struggling agency's insurance has lapsed.

I recommend that the above commentary be submitted to DPH along with a "thank you" for incorporating many of the Council's earlier recommendations into the published standards.

15. H.B. No. 65 (Trans Fat Ban in Schools)

The SCPD and GACEC have previously supported legislation to address the prevalence of obesity and its related health problems among youth.

The latest national initiative is to ban or reduce trans fats in food. In December, 2006, New York City banned all trans fats in restaurants effective July, 2008. I attach the NYC Board of Health Rule and an article describing the ban. Both sources list the ill health effects of trans fats. Consistent with the attached February 6, 2007 MSNBC article, bills are pending in ten (10) states to restrict or prohibit trans fats in restaurants. Bills are pending in six (6) states to ban trans fats in school cafeterias.

H.B. No. 6 is intended to ban trans fats in public schools during school hours. The bill (line 17) uses 0.5 grams per serving as the threshold. This is consistent with the NYC standards which "allows for the presence of naturally occurring trans fat in meat and dairy foods as well as newer "low trans fat" foods." See NYC Rule at p. 4.

I recommend a strong endorsement of the bill subject to clarification of its coverage. The synopsis indicates that it applies to public schools. However, the reference to "schools" in line 13 could be interpreted to cover private schools. Other sections within Title 14, Ch. 41 refer to both public and private schools. See, e.g., §§4103, 4107, and 4111. If the intent of the bill is to only cover public schools, this should be clarified in line 13.

16. H.B. No. 71 (Repeal of Mandatory Minimum Sentences for Drug Offenses)

This bill was introduced on February 27 and assigned to the House Judiciary Committee. It has 21 House sponsors and 9 Senate sponsors.

The bill is almost identical to H.B. No. 181 which the Council reviewed in June, 2005. My critique of that bill was as follows:

> *8. H.B. No. 181 (Repeal of Mandatory Minimum Sentences for Drug Offenses)*
>
> *This bill was introduced on May 12, 2005. It has 26 sponsors in the House and 9 sponsors in the Senate. The bill would repeal mandatory minimum drug sentences for drug offenses. Judges would still be guided by sentencing guidelines and the Truth-in-Sentencing Law. The rationale for the bill includes promotion of accuracy and fairness in sentencing, deferral to Delaware's excellent judiciary, and excessive costs attributable to overincarceration of offenders. I did not identify any overt deficiencies in the legislation.*
>
> *There is a correlation between mental illness and substance abuse. Moreover, our prison system lacks the resources to provide comprehensive drug treatment programs. It makes sense to grant judges more discretion in sentencing to address problems with addiction and extenuating circumstances as well as direct outpatient substance abuse treatment.*
>
> *I recommend endorsement.*

The SCPD and DD Council subsequently endorsed the bill. See attached June 13, 2005 letter and July 17, 2005 memo. The News Journal also endorsed the predecessor bill, noting that mandatory sentencing has resulted in the following: 1) "a swelling of the nation's, and Delaware's, prison system with first time, non-violent offenders"; 2) lost opportunities for treatment; and 3) by-passing of judicial experience and wisdom. See attached May 28, 2006 editorial.

Consistent with the SCPD's support for the predecessor legislation, I recommend endorsement.

17. H.B. No. 32 (Repeal of Mandatory Sentencing Increases for "Repeat" Drug Offenses)

This bill was introduced on January 25, 2007. As of March 12, it remained in the House Judiciary Committee. It has 13 House sponsors and 9 Senate sponsors.

As background, Title 16 Del.C. §4763(a)(1) currently authorizes increased maximum sentences for "repeat" drug convictions, i.e, if the accused has been previously convicted of certain drug offenses. The enhanced authorized maximum terms for such "repeat" offenses range from 2-17 years. Imposition of the enhanced sentence is not mandatory but subject to the discretion of the judge. This bill does not affect this aspect of the Code.

However, §4763(a)(2) imposes mandatory minimum terms for "repeat" drug offenses. H.B. No. 32 would change the mandatory minimum terms to "presumptive" terms. A judge would be required to consider certain factors (lines 17-21) in determining whether to impose the additional "presumptive" term.

Section 4763(c) currently contemplates an additional 1 year term based on a finding that a defendant established residency in Delaware to deliver or manufacture drugs. H.B. No. 32 clarifies that imposition of this additional year term is not mandatory. Rather, imposition of the additional 1 year sentence would be in the discretion of the judge (lines 14-15).

For the reasons cited in support of H.B. No. 71, I recommend endorsement. Given the relationship between the two bills, the Council may wish to issue a single letter addressing both bills.

18. H.B. No. 47 (Hospital Infections Disclosure Act)

This bill was introduced on February 27, 2007. As of March 12, it remained in the House Health & Human Development Committee.

As background, there is a national campaign to make hospital infection rate information available to the public. Such disclosure facilitates informed choice and provides an incentive for hospitals to take steps to reduce the incidence of infections.

In 2004, Consumers Union, the publisher of Consumer's Report, published the attached article noting that hospital-acquired infections affect 5% of hospital patients and add almost $5 billion a year in health care costs. Reports, data, and a model statute are collected on its website

(www.consumersunion.org/campaigns). Legislation (H.B. No. 26) was introduced in Delaware in 2005 based on the model statute. The SCPD and GACEC endorsed the bill. See, e.g., the attached May 7, 2005 GACEC letter. This predecessor bill remained in committee at the end of the last legislative session.

Since 2002, fourteen (14) states have adopted laws requiring public reporting of infection rates. Two (2) other states passed laws requiring public reporting of infection information, but not rates. Delaware's neighbors (Maryland and Pennsylvania) are among the states requiring public reporting of infection rates. See attached "Summary of State Activity".

Delaware's Division of Public Health already requires reporting of infectious diseases by health care facilities. See 9 DE Reg 1188 (February 1, 2006). However, there are no public reports which permit comparisons among hospitals.

The current bill (H.B. No. 47) is similar to the 2005 bill with a few exceptions. It reduces the civil penalty for violations from $1,000 to $500. It also covers health care facilities operated by the Department of Correction. I recommend a strong endorsement subject to one technical correction. In line 62, the reference to "Section 3 of this Act" should be to "Section 1003A of this Chapter".

19. S.B. No. 5 (Stem Cell Research)

This bill was introduced on January 25, 2007 and remained in the Senate Small Business Committee as of March 12, 2007.

A predecessor bill (S.B. No. 80) was introduced in 2005. It passed the Senate in 2006. It then passed the House with an amendment which "struck" most of the substantive provisions in the original bill. It was not revived. See attached January 19, 2006 News Journal article. The Governor supported the original version of S.B. No. 80. Id. The DD Council supported the bill while recommending that an advisory panel include 2 members from the disability community nominated by the SCPD. See attached November 18, 2005 letter.

The current bill, S. B. No. 5, has the following effects. First, it makes human cloning a felony offense subject to a $1 million fine (lines 80-88). Second, it authorizes embryonic stem cell research if embryos are less than 14 days old and would otherwise be discarded subject to certain standards (lines 89-110). Third, a Human Stem Cell Research Advisory Committee is established to adopt guidelines for embryonic stem cell research. Members would be appointed by the Governor. In deference to the DD Council's 2005 letter, membership includes "one (1) member of the Delaware disabilities community" (line 126). The Committee would issue an annual report (lines 150-153).

As the preamble to the bill recites, stem cell research has been endorsed by the American Diabetes Association, National Multiple Sclerosis Society, Paralyzed Veterans of America, and Parkinson's Disease Foundation (lines 33-35). It has also been endorsed by the AMA, Johns Hopkins University, Harvard University, University of Pennsylvania, and other prestigious research institutions (lines 27-32). Stem cell research holds great promise in health care.

I recommend endorsement.

Attachments

A:307bils.tbi
F:pub/bjh/legis/2007pl/307bils